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10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 800-2017-030401

14 **ELVERT FRANKLYN NELSON, M.D.**
6660 Coyle Avenue, Suite 290
15 Carmichael, CA 95608

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

16 **Physician's and Surgeon's Certificate No.**
17 **G 38841**

18 Respondent.

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Veronica Vo,
25 Deputy Attorney General.

26 2. Elvert Franklyn Nelson, M.D. (Respondent) is represented in this proceeding by
27 attorney Robert H. Zimmerman, Esq., whose address is: 400 University Ave, Sacramento, CA
28 95825-6502.

1 3. On or about January 20, 1994, the Board issued Physician's and Surgeon's Certificate
2 No. G 38841 to Elvert Franklyn Nelson, M.D. (Respondent). The Physician's and Surgeon's
3 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
4 No. 800-2017-030401 and will expire on September 30, 2019, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 800-2017-030401 was filed before the Board, and is currently
7 pending against Respondent. The Accusation and all other statutorily required documents were
8 properly served on Respondent on August 16, 2019. Respondent timely filed his Notice of
9 Defense contesting the Accusation. A copy of Accusation No. 800-2017-030401 is attached as
10 Exhibit A and incorporated by reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 800-2017-030401. Respondent also has carefully read,
14 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
15 and Disciplinary Order.

16 6. Respondent is fully aware of his legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
18 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
19 to the issuance of subpoenas to compel the attendance of witnesses and the production of
20 documents; the right to reconsideration and court review of an adverse decision; and all other
21 rights accorded by the California Administrative Procedure Act and other applicable laws.

22 7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
23 waives and gives up each and every right set forth above.

24 **CULPABILITY**

25 8. Respondent understands that the charges and allegations in Accusation No. 800-2017-
26 030401, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and
27 Surgeon's Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

10. Respondent understands that by signing this stipulation he enables the Executive Director, on behalf of the Board, to issue an order accepting the surrender of his Physician's and Surgeon's Certificate No. G 38841 without further notice to or opportunity to be heard by Respondent.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. **Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Medical Board “shall delegate to its executive director the authority to adopt a stipulation for surrender of a license.”**

13. This Stipulated Surrender of License and Disciplinary Order shall be subject to approval of the Executive Director on behalf of the Medical Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for her consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

III

14. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Executive Director on behalf of the Board does not, in her discretion, approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Executive Director on behalf of the Board, Respondent will assert no claim that the Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

15. This Stipulated Surrender of License and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

16. The parties agree that copies of this Stipulated Surrender of License and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies and signatures shall have the same force and effect as originals.

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III

17. In consideration of the foregoing admissions and stipulations, the parties agree the Executive Director of the Medical Board may, without further notice to or opportunity to be heard by Respondent, issues and enter the following Disciplinary Order on behalf of the Board:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 38841, issued to Respondent Elvert Franklyn Nelson, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3 Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2017-030401 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

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III

1 ACCEPTANCE

2 I have carefully read the above Stipulated Surrender of License and Disciplinary Order and
3 have fully discussed it with my attorney Robert H. Zimmerman, Esq. I understand the stipulation
4 and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this
5 Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently,
6 and agree to be bound by the Decision and Disciplinary Order of the Medical Board of California.

7
8 DATED: 9-25-19

Elvert Franklyn Nelson
ELVERT FRANKLYN NELSON, M.D.
Respondent

10 I have read and fully discussed with Respondent Elvert Franklyn Nelson, M.D., the terms
11 and conditions and other matters contained in this Stipulated Surrender of License and
12 Disciplinary Order. I approve its form and content.

13 DATED: 9/27/19

Robert H. Zimmerman, Esq.
Attorney for Respondent

15 ENDORSEMENT

16 The foregoing Stipulated Surrender of License and Disciplinary Order is hereby
17 respectfully submitted for consideration by the Medical Board of California of the Department of
18 Consumer Affairs.

19 DATED: 9/27/19

20 Respectfully submitted,

21 XAVIER BECERRA
22 Attorney General of California
23 ALEXANDRA M. ALVAREZ
24 Supervising Deputy Attorney General

25 Veronica Vo
26 VERONICA VO
27 Deputy Attorney General
28 Attorneys for Complainant

Exhibit A

Accusation No. 800-2017-030401

1 XAVIER BECERRA
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7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO 04-16-2019
BY SARA GARCIA ANALYST

8
9 BEFORE THE
MEDICAL BOARD OF CALIFORNIA
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 800-2017-030401

14 Elvert Franklyn Nelson, M.D.
15 P.O. Box 130
Corning, CA 96021

ACCUSATION

16 Physician's and Surgeon's Certificate
17 No. G 38841,

Respondent.

18
19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about January 20, 1994, the Medical Board issued Physician's and Surgeon's
25 Certificate No. G 38841 to Elvert Franklyn Nelson, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on September 30, 2019, unless renewed.

28 ///

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

5. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with

unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“(b) Gross negligence.

“(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

“(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

“(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

“(d) Incompetence.

“(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(f) Any action or conduct which would have warranted the denial of a certificate.

“(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

1 “(h) The repeated failure by a certificate holder, in the absence of good cause,
2 to attend and participate in an interview by the board. This subdivision shall only
3 apply to a certificate holder who is the subject of an investigation by the board.”

4 6. Unprofessional conduct under the Business and Professions Code section 2234 is
5 conduct which breaches the rules or ethical code of the medical profession, or conduct which is
6 unbecoming a member in good standing of the medical profession, and which demonstrates an
7 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
8 575.)

9 7. Section 2228.1 of the Code states:

10 “(a) On and after July 1, 2019, except as otherwise provided in subdivision (c),
11 the board shall require a licensee to provide a separate disclosure that includes the
12 licensee’s probation status, the length of the probation, the probation end date, all
13 practice restrictions placed on the licensee by the board, the board’s telephone
14 number, and an explanation of how the patient can find further information on the
15 licensee’s probation on the licensee’s profile page on the board’s online license
16 information Internet Web site, to a patient or the patient’s guardian or health care
17 surrogate before the patient’s first visit following the probationary order while the
18 licensee is on probation pursuant to a probationary order made on and after July 1,
19 2019, in any of the following circumstances:

20 “(1) A final adjudication by the board following an administrative hearing or
21 admitted findings or prima facie showing in a stipulated settlement establishing any
22 of the following:

23 “(A) The commission of any act of sexual abuse, misconduct, or relations with
24 a patient or client as defined in Section 726 or 729.

25 “(B) Drug or alcohol abuse directly resulting in harm to patients or the extent
26 that such use impairs the ability of the licensee to practice safely.

27 “(C) Criminal conviction directly involving harm to patient health.

28 “(D) Inappropriate prescribing resulting in harm to patients and a probationary

1 period of five years or more.

2 “(2) An accusation or statement of issues alleged that the licensee committed
3 any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and
4 a stipulated settlement based upon a nolo contendere or other similar compromise that
5 does not include any prima facie showing or admission of guilt or fact but does
6 include an express acknowledgment that the disclosure requirements of this section
7 would serve to protect the public interest.

8 “(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall
9 obtain from the patient, or the patient’s guardian or health care surrogate, a separate,
10 signed copy of that disclosure.

11 “(c) A licensee shall not be required to provide a disclosure pursuant to
12 subdivision (a) if any of the following applies:

13 “(1) The patient is unconscious or otherwise unable to comprehend the
14 disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a
15 guardian or health care surrogate is unavailable to comprehend the disclosure and
16 sign the copy.

17 “(2) The visit occurs in an emergency room or an urgent care facility or the
18 visit is unscheduled, including consultations in inpatient facilities.

19 “(3) The licensee who will be treating the patient during the visit is not known
20 to the patient until immediately prior to the start of the visit.

21 “(4) The licensee does not have a direct treatment relationship with the
22 patient.

23 “(d) On and after July 1, 2019, the board shall provide the following
24 information, with respect to licensees on probation and licensees practicing under
25 probationary licenses, in plain view on the licensee’s profile page on the board’s
26 online license information Internet Web site.

27 “(1) For probation imposed pursuant to a stipulated settlement, the causes
28 alleged in the operative accusation along with a designation identifying those causes

1 by which the licensee has expressly admitted guilt and a statement that acceptance of
2 the settlement is not an admission of guilt.

3 “(2) For probation imposed by an adjudicated decision of the board, the causes
4 for probation stated in the final probationary order.

5 “(3) For a licensee granted a probationary license, the causes by which the
6 probationary license was imposed.

7 “(4) The length of the probation and end date.

8 “(5) All practice restrictions placed on the license by the board.

9 “(e) Section 2314 shall not apply to this section.”

10 8. Section 726 of the Code states:

11 “(a) The commission of any act of sexual abuse, misconduct, or relations with a
12 patient, client, or customer constitutes unprofessional conduct and grounds for
13 disciplinary action for any person licensed under this or under any initiative act
14 referred to in this division.

15 “(b) This section shall not apply to consensual sexual contact between a
16 licensee and his or her spouse or person in an equivalent domestic relationship when
17 that licensee provides medical treatment, to his or her spouse or person in an
18 equivalent domestic relationship.”

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Gross Negligence)**

21 9. Respondent has subjected his Physician's and Surgeon's Certificate No. G 38841 to
22 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
23 the Code, in that he committed gross negligence in his care and treatment of Patient A,¹ as more
24 particularly alleged hereinafter:

25 10. Patient A first presented to Respondent on or about May 15, 2014, with low back pain
26 and right leg pain.

27 _____
28 ¹ References to “Patient A” are used to protect patient privacy.

1 11. On or about August 4, 2014, Patient A returned to Respondent, who recommended
2 surgery.

3 12. On or about October 23, 2014, Respondent performed a simple right sided L3-4 and
4 L4-5 laminectomy² surgery on Patient A.

5 13. In or around November 2014, Patient A returned to Respondent for her post-operation
6 care.

7 14. On or about December 1, 2014, Patient A presented to Respondent for her second
8 post-operation visit.

9 15. On or about December 4, 2014, Respondent went on a dinner date with Patient A.
10 Thereafter, Respondent had sexual intercourse with Patient A.

11 16. Between on or about December 4, 2014 through January 22, 2015, Respondent met
12 with Patient A socially, at least nine (9) times, and engaged in sexual intercourse with Patient A
13 five (5) times.

14 17. On or about January 22, 2015, Patient A presented to Respondent for post operation
15 care. Respondent provided care and treatment to Patient A, including, but not limited to,
16 conducting a physical examination, and making a future treatment recommendation.

17 18. Thereafter, through approximately October 2015, Respondent engaged in sexual
18 intercourse with Patient A an additional fourteen (14) times.

19 19. Respondent prescribed Ciprofloxacin³ to Patient A on or about February 27, 2015;
20 March 26, 2015; June 1, 2015; and June 3, 2015.

21 20. Respondent committed gross negligence in his care and treatment of Patient A, which
22 included, but was not limited to, engaging in a sexual relationship with Patient A.

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27 ² Laminectomy is a surgery that creates space by removing lamina, the back part of a
28 vertebra that covers your spinal canal.

³ Ciprofloxacin is an antibiotic, which can be used to treat infections.

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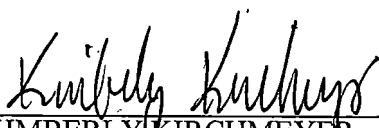
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1 DATED: August 16, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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